

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 347 of 2004

Between:

M/s. RSN Travels Private Limited,

5-87-19, 2nd Lane, Lakshmipuram, Guntur,

Rep.by Managing Director Mr. Nishtala Rama Subrahmanyam, 53 years,

S/o late Sri. N. Krishna Murthy

..... PETITIONER

AND

1 South Central Railway, rep.by Divisional Traffic Manager, Guntur.

2 Division Railway Manager (Commercial), South Central Railway,

Guntur Railway Division, Guntur

3 Sheraton Air Wings, Lakshmipuram Guntur-522 007

..... RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ or Order or direction calling upon the Respondents 1 and 2 to consider the case of the petitioner for being appointed as Rail Travel Agent in terms of the notice issued by the 1st respondent and consequently not to finalise the appointments of Respondent 3 or take any further steps in pursuance thereof, without considering the petitioner's application.

Counsel for the Petitioner: MR.S.RAVI

Counsel for the Respondents1 & 2: Mr.B.H.R. Choudary,

S.C. for Railways

Counsel for the Respondent No.3: None appeared

The Court made the following

ORDER:

In response to the notice issued on 19-06-2003 calling for applications from Indian Nationals and Organizations in India for being appointed as Rail Travel Service Agents at Guntur, petitioner also submitted his application. Since the petitioner's name was not considered on the basis that he is involved in a criminal case, this writ petition is filed questioning the selection of Service Agents at Guntur.

2. On behalf of respondents 1 and 2, first respondent-Divisional Railway Manager, South Central Railway, Guntur, filed his counter affidavit *inter alia* contending that since a criminal case is pending against the petitioner before the VII Metropolitan Magistrate, Vijayawada, in connection with the Crime No.2 of 2002 under Section 143 of the Railways Act 1989, the screening committee did not consider his application and that the screening committee considered four applications for Lakshmipuram area and appointed the third respondent as service agent after taking secured deposit and therefore, the writ petition is not maintainable.

3. The contention of the learned counsel for the petitioner is that since the application contains a question "whether any Proprietor/Partner/Director has ever been convicted? If so, give the details thereof" and since the rules/conditions framed for appointment of all agents lay down that a person who is- (a) in possession of latest income tax clearance certificate, (b) having office and premises properly maintained with adequate convenience and amenities in the city so as to accommodate the visit of sufficient number of customers, and (c) not convicted in a criminal case involving moral turpitude; may apply for issue of a Licence under Rule 4 to act as an Agent, and since petitioner, admittedly, is not convicted in any case,

rejection of application of the petitioner merely on the ground that a criminal case is pending against him is improper.

4. The contention of the learned standing counsel for Railways, appearing on behalf of respondents 1 and 2, is that since petitioner is involved in a criminal case, his application was not considered and in any event this petition became infructuous since third respondent was selected and appointed and contends that petitioner's name would be considered when a fresh notification is issued, which is in the offing.

5. I find force in the contention of the learned counsel for the petitioner that since there is neither a rule nor a column in the application relating to the pendency of criminal cases against an applicant being a disqualification, non-consideration of the application of the petitioner, on the ground of pendency of a criminal case, is improper. As per the rule only a person convicted in respect of an offence involving moral turpitude is ineligible. It is well known that till trial is completed nobody can say whether the accused would be convicted or not. So mere pendency of a criminal case does not amount to 'conviction'. If respondents 1 and 2 did not intend to consider even the person against whom a criminal case is pending, the rule and application should be amended suitably. In view thereof rejection of the application of the petitioner on the ground that a criminal case is pending against him, is improper and consequently the selection of the third respondent is also improper.

6. Therefore, the writ petition is allowed and the respondents 1 and 2 are directed to consider the petitioner's application also and make the selection afresh. No costs.

C.Y. SOMAYAJULU, J

Date: 06th April, 2005.

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The Rule nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday, the Sixth day of April, Two Thousand and Five.

ASSISTANT REGISTRAR

To

- 1 The Divisional Traffic Manager, South Central Railway, Guntur.
- 2 The Division Railway Manager (Commercial), South Central Railway,
Guntur Railway Division, Guntur.
- 3 Two CD copies